No. 83-1981

In the Supreme Court of the United States

OCTOBER TERM, 1984

NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS, ET AL., PETITIONERS

v.

UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Secretary of Labor has authority under the Comprehensive Employment and Training Act of 1973 to require repayment of grant funds misspent prior to 1978.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A50-A60) is reported at 725 F.2d 238. The opinions of the administrative law judge (Pet. App. A2-A13, A17-A48) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 1984. A petition for rehearing was denied on March 6, 1984 (Pet. App. A61-A63). The petition for a writ of certiorari was filed on June 4, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are state governmental agencies that served as "prime sponsors" under the Comprehensive Employment and Training Act of 1973 (CETA), Pub. L.

No. 93-203, 87 Stat. 839, 29 U.S.C. (1976 ed.) 801 *et seq.*[1] As such, they received grant funds from the Department of Labor and contracted with subgrantees for expenditure of the funds (Pet. App. A53). The grants at issue in this case were awarded under the original Comprehensive Employment and Training Act of 1973, before enactment of the Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, 92 Stat. 1909, 29 U.S.C. (Supp. V 1981) 801 *et seq.*[2] CETA has now been repealed and replaced by the Job Training Partnership Act, 29 U.S.C. 1501 *et seq.*[3]

CETA established decentralized and noncategorical employment and training programs for unemployed, underemployed, and economically disadvantaged persons. These programs were designed to be responsive to local needs, subject to continuing federal oversight. § 2, 87 Stat. 839, 29 U.S.C. (1976 ed.) 801; H.R. Rep. 93-659, 93d Cong., 1st Sess. 1 (1973). To receive financial assistance, a prime sponsor was required to submit a "comprehensive manpower plan" meeting specific statutory and regulatory criteria. § 105, 87 Stat. 843-844, 29 U.S.C. (1976 ed.) 815. Additional conditions for funding were contained in the Act, regulations, and assurances set forth in the grant itself. Grant payments could be made in advance of expenditures or by way of reimbursement or otherwise, as the Secretary

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[1]A prime sponsor was the entity to which financial assistance was made available under CETA. Most CETA programs were administered at the local level by a prime sponsor, which was usually a unit of state or local government. See Section 102, 87 Stat. 841, 29 U.S.C. (1976 ed.) 812.

[2]The 1978 CETA Amendments expressly authorized the Secretary to order recipients to repay misspent funds. § 2, 92 Stat. 1927, 29 U.S.C. (Supp. V 1981) 816(d)(1) and (2).

[3]The Job Training Partnership Act does not affect pending CETA administrative or judicial proceedings. 29 U.S.C. 1591.

deemed necessary to carry out the Act's provisions. § 602(b), 87 Stat. 878, 29 U.S.C. (1976 ed.) 962(b). The Secretary by regulation chose to use an advance-funding method of distributing CETA funds because most recipients were unable to operate on a cost-reimbursement basis. 29 C.F.R. 98.2 (1976).

Under the 1973 Act, the Secretary had broad authority to audit grant recipients to assure that funds provided under the Act were used in accordance with its provisions. § 613, 87 Stat. 882, 29 U.S.C. (1976 ed.) 992. The implementing regulations described applicable audit procedures in detail, including the process by which the agency determined whether specific expenditures should be disallowed. 29 C.F.R. 98.6 (1976). If, as a result of an audit, the Secretary determined that funds had been misspent, he could, under Section 602(b), make necessary adjustments in payments. 87 Stat. 878, 29 U.S.C. (1976 ed.) 962(b). The Secretary was also empowered, in specified circumstances, to withhold future funds in cases of misspending. *Ibid.* In the event that the Secretary chose to withhold funds, however, the grantee was not permitted to reduce program operations. 29 C.F.R. 98.15 (1976).

2. Following CETA audits, the Department of Labor determined that petitioners had misspent CETA funds in connection with the hiring of ineligible CETA participants and the payment of CETA staff salaries (Pet. App. A4-A9, A24-A31).[4] As a result, petitioners were asked to repay the disallowed costs to the Department of Labor. Petitioners

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[4]A grant officer makes the initial audit determinations and provides an opportunity for informal resolution. The grant officer thereafter will issue a final determination, which the grantee may challenge in an evidentiary hearing before an administrative law judge. If after 30 days the Secretary leaves the ALJ's decision undisturbed, it becomes the final decision of the Secretary and is subject to judicial review in the court of appeals for the circuit where the grantee resides. 20 C.F.R. 676.86-676.92.

contested these determinations. Following hearings in separate proceedings, an administrative law judge (ALJ) affirmed the disallowances and ordered petitioners to make repayment.

The ALJ held that petitioner North Carolina Commission of Indian Affairs had violated CETA by using CETA funds to pay the total amount of salaries of employees who spent time working with federal grants other than CETA, and by hiring CETA participants in violation of the nepotism prohibitions in the regulations (Pet. App. A6-A9, A54 n.3). He rejected the argument that the government should be precluded, on grounds of estoppel or laches, from seeking repayment of the disallowed costs (*id.* at A10-A12). Accordingly, the ALJ ordered petitioner North Carolina Commission of Indian Affairs to repay $34,147.19 (*id.* at A13). The ALJ's decision became the final decision of the Secretary when the Secretary did not modify or vacate it within 30 days. 20 C.F.R. 676.91(f). The Secretary's authority to order repayment was not challenged in this proceeding.

The ALJ also held that petitioner North Carolina Department of Natural Resources and Community Development had violated CETA by failing adequately to monitor its subgrantees to assure the eligibility of participants enrolled in their CETA programs. He further ruled that the state agency had failed to resolve audits of its subgrantees in a timely manner and was liable for the costs disallowed subsequent to those audits. Pet. App. A25-A31, A39-A42, A54 n.3. Finally, the ALJ decided that the 1973 Act implied the authority for the Secretary to recover misspent grant funds by ordering repayment (*id.* at A31-A38).[5] Based on these rulings, the ALJ directed petitioner North Carolina

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[5]The ALJ also found a common-law right to require repayment in order to recover misspent grant funds (Pet. App. A35).

Department of Natural Resources and Community Development to repay $101,464.58 (*id.* at A48). This decision became the final decision of the Secretary pursuant to 20 C.F.R. 676.91(f).

3. The court of appeals affirmed (Pet. App. A50-A60). Relying on this Court's decision in *Bell* v. *New Jersey*, No. 81-2125 (May 31, 1983), which upheld the Secretary of Education's authority to order repayment of misspent grant funds under the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 2701 *et seq.*, the court of appeals held that the 1973 Comprehensive Employment and Training Act likewise authorized the Secretary of Labor to recoup misspent grants by means of repayment. In particular, the court ruled that "the language, the evidence of legislative intent, the administrative interpretation and the overall rationale of the 1973 CETA Act are sufficiently similar to that of ESEA to mandate a finding that the Department of Labor may order repayment of misapplied moneys" (Pet. App. A56; 725 F.2d at 240-241).[6]

The court of appeals observed that the language in Section 602(b) of CETA (87 Stat. 878, 29 U.S.C. (1976 ed.) 962(b)) permitting the Secretary to make "necessary adjustments in payments on account of overpayments or underpayments" is similar to the language in ESEA from which this Court found repayment authority in *Bell*. The court also rejected petitioners' argument that the Secretary of Labor's authority to withhold funds from future grants is the exclusive method to recover misspent funds, reasoning that ESEA also provided for withholding funds and that in any event Section 602(b) of CETA states that the Secretary "may *also* withhold funds" (87 Stat. 878, 29 U.S.C. (1976

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[6]This portion of the court of appeals' opinion is misprinted in the Appendix to the Petition.

ed.) 962(b) (emphasis added)). Pet. App. A56-A57. In addition, the court of appeals, following the analysis in *Bell*, concluded that the legislative history of the 1978 CETA Amendments, which expressly provided repayment authority, indicated that Congress "assumed the existence of a right of recovery and approved of the Department of Labor's pre-1978 practice of actually recoupi[n]g funds" (Pet. App. A57-A58 (footnote omitted)). And, again as in *Bell*, the court found that "[t]he agency's practice of ordering that funds be reimbursed prior to the 1978 amendments also supports Labor's argument that a right of recovery existed under the 1973 Act" (*id.* at A58). Finally, relying on this Court's discussion in *Bell* of *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1 (1981), the court of appeals distinguished *Pennhurst* on the grounds that CETA repayment authority satisfied the requirement of legislative clarity and involved remedies for past noncompliance rather than unexpected conditions of compliance (Pet. App. A59).[7]

ARGUMENT

The court of appeals correctly applied the controlling principles set forth in *Bell* v. *New Jersey*, *supra*, to the substantially similar statutory scheme involved in this case, and its conclusions are in accord with the decisions of all other courts of appeals that have considered the issue of repayment authority under the 1973 CETA Act. Accordingly, further review is not warranted.

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[7]The court of appeals also concluded that there was substantial evidence to support the Secretary's finding that the funds had been improperly spent (Pet. App. A59-A60). Petitioners have conceded, for purposes of their Petition, that the funds were misspent (Pet. 6).

Because it held that the 1973 Act authorized repayment, the court of appeals, "[f]ollowing the lead of *Bell*" (Pet. App. A55), found it unnecessary to reach the Secretary's additional arguments that repayment was authorized by retroactive application of the 1978 CETA Amendments or by the common law.

1. In *Bell*, this Court held that the Department of Education has authority to recover misused funds under the pre-1978 version of Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 2701 *et seq.* The Court held (*Bell*, slip op. 8-10) that the "plain language" of ESEA, which required payments of federal grants to take into account or make adjustments for any overpayments or underpayments in previous grants, gave the government the right to recover misspent funds. The Court also noted (slip op. 9-12, 15-16) that its interpretation of ESEA was supported by the contemporaneous and subsequent legislative history of the statute. In originally enacting ESEA, Congress made clear its intention that states return misused funds, and subsequent legislative actions confirmed this policy; indeed, in amending ESEA in 1978 expressly to permit recovery of misused funds, Congress indicated its understanding that repayment authority already existed, and the 1978 Amendment had been designed to clarify the government's legal authority and to encourage greater use of the recoupment remedy. Finally, the Court emphasized that the Department of Education had long recognized that it was authorized to seek repayment of misused funds and that it had in fact exercised such authority.

As the court of appeals correctly held (Pet. App. A56-A57; 725 F.2d at 240-241), the language, legislative history, and administrative interpretation of the 1973 CETA Act closely parallel those of ESEA. Every court of appeals that has considered the question has concluded, in accord with the decision below, that under the *Bell* analysis the 1973 CETA Act authorizes the Secretary of Labor to require repayment of misspent grant funds. See *California Tribal Chairman's Ass'n* v. *United States Department of Labor*, 730 F.2d 1289 (9th Cir. 1984); *Texarkana Metropolitan Area Manpower Consortium* v. *Donovan*, 721 F.2d 1162

(8th Cir. 1983) (per curiam); *Lehigh Valley Manpower Program* v. *Donovan*, 718 F.2d 99 (3d Cir. 1983); *Atlantic County* v. *United States Department of Labor*, 715 F.2d 834 (3d Cir. 1983) (per curiam).

a. In Section 602(b) of CETA, Congress specifically delegated to the Secretary of Labor broad discretion "to make such grants, contracts, or agreements, establish such procedures * * *, and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this Act, as he may deem necessary to carry out the provisions of this Act * * *, *including necessary adjustments in payments on account of overpayments or underpayments.*" 87 Stat. 878, 29 U.S.C. (1976 ed.) 962(b) (emphasis added). Congress also granted the Secretary general authority to audit grant recipients "[i]n order to assure that funds provided under this Act are used in accordance with its provisions." § 613, 87 Stat. 882, 29 U.S.C. (1976 ed.) 992. These provisions in CETA are virtually identical to those relied upon by this Court to find a right of repayment under ESEA. *Bell*, slip op. 8-10 & n.10. Under *Bell*, therefore, this language authorizes the Secretary of Labor to require refunds of misspent monies under CETA.

Repayment authority, moreover, is a reasonable element of the CETA statutory scheme. The authority to audit a grant recipient suggests the inherent right to recover misspent funds identified by the grant officer. As noted above, the stated purpose of a CETA audit is to assure that funds have been used in accordance with the Act's provisions, and recovery of misspent funds discovered through an audit represents an evident means of enforcement that is integrally related to that objective.

That the CETA statute authorizes a recovery remedy is further made clear by the specific grant of authority in Section 602(b) for the Secretary to disburse monies by way

of reimbursement for prior expenditures as an alternative to making payments in advance. 87 Stat. 878, 29 U.S.C. (1976 ed.) 962(b). Ordinarily, the Secretary made funds available in advance to grantees because many recipients would not have been able to operate on a cost-reimbursement basis. If, however, the Secretary had operated on a reimbursement basis and funds had been misspent, the Secretary could simply have declined to make payments for the disallowed expenses pursuant to the express provisions of Sections 108(b)(2) and 602(b) of CETA. 87 Stat. 847, 878, 29 U.S.C. (1976 ed.) 818(b)(2), 962(b); see also 29 C.F.R. 98.15 (1976). There is no reason to conclude that Congress intended to relieve a grantee of the responsibility for misspent funds simply because the Secretary chose, in either a single case or a class of cases, to use an advance-funding method.

To be sure, the Secretary of Labor, like the Secretary of Education under Section 210 of ESEA (20 U.S.C. (Supp. V 1981) 2890 (repealed by Pub. L. No. 97-35, § 587(a)(1), 95 Stat. 480)), was authorized to "withhold funds otherwise payable under this Act." § 602(b), 87 Stat. 878, 29 U.S.C. (1976 ed.) 962(b). But, contrary to petitioners' assertions (Pet. 8-13), there is no suggestion in the statute that withholding was to be the exclusive means to recover misspent funds. See *California Tribal Chairman's Ass'n*, 730 F.2d at 1291; *Atlantic County*, 715 F.2d at 837; see also *Bell*, slip op. 6-7 n.5, 9 n.8. In fact, the language of Section 602(b) of CETA itself refutes petitioners' argument because it specifically states, after providing for adjustments in payments on account of overpayment or underpayments, that the Secretary "may *also* withhold funds." 87 Stat. 878, 29 U.S.C. (1976 ed.) 962(b) (emphasis added). Plainly, therefore, withholding was not intended to be the sole remedy.[8]

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[8]Accordingly, withholding and repayment are complementary rather than "redundant" remedies, as petitioners argue (Pet. 11-13). The Secretary, in his discretion, may use either recovery method in appropriate

In addition, withholding might not always result in recovery by the government of all misused funds. Cf. *Bell*, slip op. 6-7 n.5, 9 n.8. Because withholding applies to future funds, it allows full recovery only where the recipient's grant continues and where there are sufficient funds remaining in the grant to cover the misspent funds. Withholding is, in fact, totally ineffectual in egregious cases of misspending in which the Secretary, after determining that the grantee could no longer be entrusted with the responsibility of administering a CETA program, was required to revoke the grant (§ 108, 87 Stat. 847-848, 29 U.S.C. (1976 ed.) 818), and thus there were no future funds to be withheld. There is no basis in the statute to read it to bar repayment of the substantial amounts of misspent money that could be involved in such cases.[9]

b. Repayment authority under the CETA Act of 1973, as under the original ESEA Act, is fully consistent with congressional intent. Both the contemporaneous and subsequent legislative history of the 1973 CETA Act show that Congress intended the Secretary to be able to seek repayment of misspent funds. During the initial consideration of CETA, Congress expressed great concern about federal

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circumstances. The approval of withholding as a remedy, in the instances cited by petitioners (Pet. 17-18, 21), in no way indicates that repayment was not also available. We further note that nothing in ESEA's statutory language supports petitioners' assertion (Pet. 12) that, unlike the Secretary of Labor under Section 602(b) of CETA, the Secretary of Education lacks authority to withhold funds to recover misexpenditures under Section 210 of ESEA.

[9]Thus, petitioners' argument (Pet. 9) is erroneous that the CETA regulations (29 C.F.R. 98.15 (1976)), by requiring a grantee whose funds have been withheld to continue to operate its program as specified in the applicable plan, would satisfy this Court's concern in *Bell* that the government be able fully to recover misspent funds. Because of the nature of withholding, full recovery is not assured even with CETA's maintenance-of-service regulation.

supervision and grantee accountability, and it indicated that it expected the Secretary to protect federal monies by recovering misspent funds. See H.R. Rep. 93-659, *supra*, at 8; 119 Cong. Rec. 25709 (1973) (statement of Sen. Javits); *id.* at 42877 (statement of Rep. Perkins). Thus, in enacting CETA, as in passing ESEA, Congress manifested "a concern and a desire to hold the States accountable in every way possible" (*Bell*, slip op. 9 n.9).

In the 1978 CETA Amendments, Congress reconfirmed the Secretary's repayment authority. In expressly providing that the Secretary could order repayment of misspent CETA funds (§ 2, 92 Stat. 1927, 29 U.S.C. (Supp. V 1981) 816(d)(1) and (2) (see page 2 & note 2, *supra*)), Congress sought to clarify the Secretary's existing repayment authority. See *California Tribal Chairman's Ass'n*, 730 F.2d at 1291; *Atlantic County*, 715 F.2d at 836. Moreover, in the 1978 debates, Congress acknowledged that the Secretary had been directly recovering misspent grant funds during the previous years. Rather than criticizing this exercise of the Secretary's authority or suggesting it was ultra vires, Congress expressed frustration that the agency had not collected *more* funds that were improperly spent. See 124 Cong. Rec. 25168 (1978) (statement of Rep. Hawkins); *id.* at 25221 (statement of Rep. Cornell); *id.* at 31021 (statement of Rep. Maguire); *id.* at 31026 (statement of Rep. Collins); *id.* at 27789 (statement of Sen. Bellmon).[10] Thus,

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[10]Extensive congressional oversight hearings were held in 1978 on the Department of Labor's monitoring of CETA programs. These hearings contain a number of specific references to the Department's efforts to recover misspent CETA funds. *Department of Labor Monitoring of Manpower Programs for the Hard to Employ: Hearings Before the Subcomm. of the House Comm. on Government Operations*, 95th Cong., 2d Sess. 762-779 (1978). Department officials emphasized that efforts directly to recover improperly expended funds, as an alternative to withholding future funding, represented the "much more aggressive" practice of that administration (*id.* at 774).

in 1978, Congress specifically and deliberately embraced the Secretary's interpretation of the 1973 Act. As in *Bell* (slip op. 10-12, 15-16), these subsequent legislative developments lend strong support to the Secretary's repayment authority under the original CETA Act. See also *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 381-382 (1969).[11]

c. Under CETA, as under ESEA (*Bell*, slip op. 12-13), the administering agency has interpreted the statutory language to authorize repayment. See *California Tribal Chairman's Ass'n*, 730 F.2d at 1291; *Atlantic County*, 715 F.2d at 836. This interpretation of the statute by the agency charged with its implementation is entitled to great weight. See *Chevron U.S.A. Inc.* v. *NRDC*, No. 82-1005 (June 25, 1984), slip op. 5-7, 27-28; *North Haven Board of Education* v. *Bell*, 456 U.S. 512, 522 n.12 (1982); *E.I. du Pont de Nemours & Co.* v. *Collins*, 432 U.S. 46, 54-55 (1977).

Moreover, as the court below recognized (Pet. App. A58, quoting *Atlantic County*, 715 F.2d at 836), there is more in this case " 'than the "long held" view of an agency which the

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[11] Petitioners rely (Pet. 19) on a colloquy in the 1978 debates in which Senator Schweiker stated that Section 106(d)(2) of the amended Act (§ 2, 92 Stat. 1927, 29 U.S.C. (Supp. V 1981) 816(d)(2) (see page 11, *supra*)), would have no retroactive application. However, this floor debate addressed only Section 106(d)(2), an amendment to require *mandatory* termination or suspension of financial assistance and repayment of misspent funds for violations of, inter alia, certain *new* provisions of the Act. This Section was intended to require a more severe remedy for particular abuses in public service employment programs than that provided in Section 106(d)(1), in which the Secretary was authorized (but not required) to recover misspent funds for failure to comply with any provision of CETA. The legislative history does not suggest that the authority to seek repayment of misspent funds was new or should have only prospective application. Representative Butler's statement concerning existing penalties, which petitioners cite (Pet. 19), similarly was made in the context of the new mandatory payback authority in Section 106(d)(2). See 124 Cong. Rec. 25180, 25221-25222 (1978) (statements of Rep. Cornell and Rep. Butler).

Bell [C]ourt found persuasive.' " CETA replaced a number of earlier manpower statutes[12] that sought to achieve goals similar to CETA and that, like CETA, did not include express language on repayment. Nevertheless, under those statutes, the Secretary of Labor had routinely audited grantees and contractors, disallowed costs, and recovered misspent funds. See *Atlantic County*, 715 F.2d at 836 (citing administrative cases). In fact, as the court in *Atlantic County* noted (*ibid.*), Section 602(b) of CETA "echoes" the language of two of the predecessor statutes, Section 12(e) of the Emergency Employment Act of 1971, Pub. L. No. 92-54, 85 Stat. 154, 42 U.S.C. (Supp. II 1972) 4881(e), and Section 602(n) of the Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 530, 42 U.S.C. (1976 ed.) 2942(n). Given this administrative practice, Congress's failure in passing CETA to indicate any disapproval of the Secretary's repayment authority under the predecessor statutes — and especially since it was largely retaining the relevant statutory languge — is persuasive evidence that Congress agreed with and ratified the Secretary's position. See *Atlantic County*, 715 F.2d at 836; *Texarkana Metropolitan Area Manpower Consortium*, 721 F.2d at 1164; see generally *Lorillard* v. *Pons*, 434 U.S. 575, 580-581 (1978); *NLRB* v. *Gullet Gin Co.*, 340 U.S. 361, 366 (1951).[13]

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[12]Manpower Development and Training Act of 1962, Pub. L. No. 87-415, 76 Stat. 23, 42 U.S.C. (1970 ed.) 2571 *et seq.*; Title I of the Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508, 42 U.S.C. (1976 ed.) 2701 *et seq.*; and the Emergency Employment Act of 1971, Pub. L. No. 92-54, 85 Stat. 146, 42 U.S.C. (Supp. II 1972) 4871 *et seq.*

[13]Petitioners' analysis of the predecessor manpower statutes (Pet. 14-17) is erroneous. The court of appeals correctly determined that none of the pre-existing laws expressly included "repayment" language (Pet. App. A59). The language in the Manpower Development and Training Act cited by petitioners (Pet. 14-15) does not mention repayment but simply refers to "protect[ion] * * * against loss." Moreover,

2. Petitioners argue (Pet. 22-25) that the language authorizing repayment in the 1973 CETA Act does not satisfy the standard of *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1 (1981), that conditions in federal grants to states be unambiguously expressed. This Court in *Bell*, however, held (slip op. 16 n.17) that substantially identical language authorizing recovery under ESEA "meets *Pennhurst*'s requirement of legislative clarity." In addition, the Court explained (*ibid.*) that "*Pennhurst* arose in the context of imposing an unexpected condition for compliance — a new obligation for participating States — while here our concern is with the remedies available against a noncomplying State." As the court below held (Pet. App. A59), the *Pennhurst* test is likewise met here. See also *California Tribal Chairman's Ass'n*, 730 F.2d at 1291-1292.[14]

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the provision in the Economic Opportunity Act, as amended, cited by petitioners (Pet. 14), which does authorize "recovery of funds," applies solely to Title II Urban and Rural Community Action Programs, not Title I manpower programs. Pub. L. No. 90-222, § 104, 81 Stat. 706, 42 U.S.C. (1976 ed.) 2835(c). Finally, assuming legislative intent can be deduced from Congress's failure to enact the Manpower Revenue-Sharing Act of 1971, no inference of opposition to an administrative repayment procedure can be drawn here. The provision in that bill relied upon by petitioners (Pet. 15) would have authorized the Attorney General to institute a civil action in appropriate cases. *Proposed Manpower Revenue-Sharing Act of 1971* § 105(a)(1), *reprinted in U.S. Dep't of Labor, Manpower Report of the President* 190 (1971). This provision thus implements the government's generally recognized right to enforce the terms of its agreements in a court of competent jurisdiction. See *Rex Trailer Co.* v. *United States*, 350 U.S. 148, 151 (1956). It does not address the authority under CETA, at issue in this case, to seek administrative repayment.

[14]We also point out that the financial obligations sought to be imposed upon the state in *Pennhurst* were largely indeterminate and could well have exceeded the federal funds that the state had received (451 U.S. at 24-25). Here, in contrast, petitioners are being asked to do no more than repay the portion of the federal grant that was improperly spent. As this Court recently noted, "[p]rotection of the public fisc

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1984

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requires that those who seek public funds act with scrupulous regard for the requirements of the law; [petitioners] could expect no less than to be held to the most demanding standards in [their] quest for public funds." *Heckler* v. *Community Health Services*, No. 83-56 (May 21, 1984), slip op. 11.

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